IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

LAND ACQUISITION REFERENCE NO.03 OF 2000
IN
LAQ/648

Special Land Acquisition Officer(7),
Mumbai & Mumbai Suburban District,
Shri Chhatrapati Shivaji Maharaj Market,
2nd Floor, Palton Road, Mumbai 400 001.

And

Ratilal Dahyabhai Bhuta,
Dahyabhai Bhuta Chawl, Room No.53,
Juhu Lane, Andheri (W),
Mumbai 400 058. ...Claimants

And

The Commissioner Greater Mumbai,
Municipal Corporation,
Extension Building,
Opposite Mumbai C.S.T.,
Mumbai 400 001. ...Acquiring Body

Shri Rajiv Mane, A.G.P for the Special Land Acquisition Officer.

Shri Makhija instructed Shri Harshad Pimpale for the B.M.C.

Shri Nimish Desai for the Claimant.

CORAM : ABHAY S.OKA, J.
DATED : JULY 27, 2007 &
AUGUST 02, 2007.

JUDGMENT:

1. The submissions of the learned counsel appearing for the parites were heard yesterday. Before I deal with the merits of the Land Acquisition Reference, it will be necessary to take a note of the manner in which the office of the Original Side of

this High Court is functioning. By way of illustration it must be recorded what transpired in the present case. A commissioner was appointed for recording evidence of witnesses of the Claimant. On 13th June, 2007 this Court adjourned the reference till 19th July, 2007 and in the meanwhile the commissioner was directed to complete the recording of evidence and forward the report. On 19th July, 2007 the Land Acquisition Reference appeared before this Court for directions. The learned counsel appearing for the parties stated that the evidence of the witnesses has been completely recorded and the commissioner has submitted a report. On the basis of the said statement, this Court passed an order directing that Land Acquisition Reference should be kept on 25th July, 2007 for arguments. Accordingly, reference was shown on the cause-list for arguments. The matter did not reach on 25th July, 2007 and it ultimately reached on 26th July, 2007. After the learned counsel started making submissions, it was found that the Commissioner’s report alongwith affidavits of evidence and notes of cross-examination was not on record. The learned counsel appearing for the acquiring body was good enough to handover xerox copies of affidavits of evidence and notes of cross-examination for my perusal. The learned counsel appearing for the claimant fairly agreed that court

can read xerox copies. When submissions were being advanced before this Court, the concerned staff members of the office were made aware that commissioner's report is not on record. In the evening I called the learned Assistant Prothonotary and Master to my chamber and brought this fact to his notice. Only thereafter at 2.00 p.m today the office has forwarded sealed envelope containing the commissioner's report.

2. It is not a solitary incident. Atleast in two cases every day, hearing/recording of evidence is required to be adjourned as either the original documents or the notes of evidence are not sent to the Court. In case of one suit, after hearing the argument I did not immediately deliver the judgment as parties were to try for amicable settlement. Three days after the agruments were heard, when the suit came up, the original documents were missing from the file.

3. In one of the Land Acquisition Refernces being Reference No.25 of 1986 it was noticed that the notes of evidence of the witnesses running into several hundered pages were not on record. Part of the notes of evidence were found in the bound book of the orders passed by the concerned learned Judge (Coram: Parekh,

J). About 200 pages of notes of evidence were missing. By consent of the counsel appearing for the parties I had to take on record a compilation of xerox copies of remaining notes of evidence running into more than 200 pages and read the said xerox copies of the original. It is brought to my notice that a very peculiar method is followed by the office of the Original Side. The original documents on record of the suit are kept in the custody of one clerk. The notes of evidence are kept with another clerk and remaining papers of the suit are kept in the custody of a third clerk. There may be a good reasons for adopting such a strange practice. But there is a complete lack of co-ordination between different members of the staff. If papers of the suit or Land Acquisition Reference are to remain in this fashion in the custody of three different clerks, when the matter is placed on board for arguments and/or for recording evidence, it is the responsibility of the registry to ensure that the entire record of the suit or Land Acquisition Refernce is placed before the Court.

4. The explanation which is given to me by the concerned staff members in this case is that there was no endorsement on the daily board of 25th July, 2007 that the report of the Commissioner was received. This execuse is very serious. Firstly, there is a

serious lapse on the part of the office in not making endorsement on the board though the report of the Commissioner was already received. Secondly, it was duty of the concerned staff member to verify whether the report was received when the matter was listed on the board for arguments. Not only that no verification was made, but such a lame excuse is given that Commissioner's report was not traced out because there was no remark on the cause list. The first default on the part of the office was that no effort was made to ensure that entire record is transmitted to the Court. The second default was that no entry of the receipt of the Commissioner's report was made. It is for the Prothonotary and Senior Master to look into this aspect and take such remedial measures or steps as are required. To say the least, because of this peculiar method adopted by the Original Side office, time of the Court is being repeatedly wasted.

5. During the course of hearing of the final armguments in a suit or a reference I am required to search for papers in the record. I am required to search for the documents because there is no method of arranging the documents and notes of evidence in a particular order. Copies of earlier orders passed by the Court are missing in many cases. Even if the copies are available, the same are not arranged in a

chronological order. The Prothonotary and Senior Master will place a copy of this Judgment before the Hon'ble the Chief Justice so that necessary steps can be taken for rectification.

6. This is a reference under section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act of 1894). The land subject matter of acquisition is bearing C.T.S.No.561, 561/1, 561/2, 561/3, 561/4 and 561/5 totally admeasuring 541.3 sq meter of village Vile Parle, Taluka Andheri, Mumbai suburban district. The acquired land is reserved in the sanctioned development plan of the Mumbai Municipal Corporation for 90 feet wide regular road line of Barfiwalla lane. A notification under sub-section 2 and sub-section 4 of section 126 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as the said Act of 1966) read with section 6 of the said Act of 1894 was issued by the Collector on 13th February, 1991. The said notification was published in local daily newspapers on 19th February, 1991 and 22nd February, 1991. Publication of the substance of the notification was made at Talathi Chavdi on 10th January, 1992 and on the site on 01st February, 1992.

7. The Award of the Land Acquisition Officer under

section 11 of the said Act of 1894 was made on seventh day of January 1994. The Special Land Acquisition Officer in the Award noted that the acquired land is encumbered with built up structures. He also noted that there is one well on the land under acquisition. The Land Acquisition Officer observed that the claimant being the owner of the acquired land is entitled to receive compenastion in respect of the acquired land. The Special Land Acquisition Officer fixed the market value at the rate of Rs.450/- per sq meter. Apart from the market value of the land, the Special Land Acquisition Officer fixed the value of the well at Rs.1000/-. He granted shifting charges at the rate of Rs.300/- per occupier to all 16 occupiers of the structures including the claimant. The Land Acquisition Officer has noted in the Award that the Claimant has claimed alternative accomodation and the Claimant has not made any claim for structures and demolition charges. The Special Land Acquisition Officer did not award any compensation in respect of structures save and except the shifting charges.

8. In the Application for Reference under section 18 of the said Act of 1894, the Claimant has claimed additional amount of Rs.3,16,89.126.00/-. He claimed the market value of the land at the rate of Rs.20,000/- per sq meter. He claimed a sum of rupees

one crore on account of value of 17 structures as well as value of the well. The claimant filed affidavit-in-lieu of examination-in-chief of himself. He has also filed affidavit of examination-in-chief of an expert witness Shri Laxmikant K. Gandhi of M/s.K.C.Gandhi and Company, Architects, Engineers & Registered Valuers. The Claimant has placed reliance on the valuation report of the said architect dated 21st August, 2001. The claimants have produced sale instances in the form of four documents.

9. The question for consideration is as to whether the claimant is entitled to claim enhancement in the market value of the land. The second question is whether the claimant is entitled to receive compensation in respect of the structures and the third question to be decided is whether the claimant is entitled to enhancement in market value of the well.

10. The learned counsel appering for the claimant has taken me through the affidavits in lieu of evidence of the witnesses and notes of cross-examination. He submitted that the claimant has produced certified copies of four documents by way of sale instances. He placed reliance on Sale Deed dated 26th March, 1991 executed by Dr (Mrs) Anusaya Satish

Divecha in favour of M/s.Zenith Exports Ltd. According to him the said document is a sale instance of a land which is comparable to the acquired land in all respects. He also placed his reliance on a Deed of Conveyance dated 15th January, 1991 executed by Balkrushna Bawaji Khade and others in favour of M/s.Shant V. Developers. He submitted that the said conveyance is also in respect of a land which is comparable. He also placed reliance on the opinion of M/s.K.C.Gandhi to substaniate the claim regarding market value of the structures and the well. He pointed out that for the purposes of ascertaining stamp duty, the Government of Maharashtra has fixed the rates of the plots of land on the north of the Juhu Lane in the year 1991 at Rs.6458/- per sq meter. He submitted that the said rate fixed by the State Government certainly affords a basis on which market value can be fixed and the market value ought to be fixed. He submitted that the reference deserves to be allowed.

11. The learned counsel appearing for the acquiring body i.e the Bombay Municipal Corporation submitted that though the documents evidencing sale instances relied upon by the claimant may be admissible in evidence, there is no evidence on record to prove that the sale instances are of lands which are comparable

to the acquired land. He submitted that the expert visited the acquired land when structures were already demolished and therefore, in so far as structures are concerned the expert has no personal knowledge. He submitted that the evidence of the expert will have to be discarded and therefore, no case is made out for grant of enhancement in compensation as the claimant has failed to discharge bruden on him. The learned Government Pleader supported the acquiring body.

12. I have considered the submissions. It is well accepted and well settled proposition of law that an Award made by Land Acquisition Officer is an offer and the claimant who is claiming enhanced compensation is more or less in a position of a Plaintiff. If the Claimant fails to produce the evidence showing that the Award is inadequate, the Award must stand. Only if the claimant succeeds in prima facie showing that Award is inadequate, the State Government or acquiring body must support the Award by producing the evidence. In so far as the sale instances are concerned, the law is very clear as observed by the Apex Court in the case of **Ranbeer Singh and Anr Vs. Union of India (2005(12) Supreme Court Cases Page 59)**. The Apex Court observed that the burden of proof of establishing that the acquired land and the land covered by the sale transaction bear similar or same

potentialities or advantageous features is on the claimant.

13. Under section 51-A of the said Act of 1894, in a reference proceeding under section 18, a certified copy of the document registered under the provisions of the Registration Act, 1908 can be accepted as evidence of the transaction recorded in the said document. Therefore, the certified copies of the registered documents on which the claimant is relying upon are certainly admissible in evidence as the evidence of a transaction recorded in said documents. Nevertheless the burden still remains on the claimant to show that the land subject matter of the sale instances were comparable on the relevant date with the acquired land with reference to potentialities and advantageous features. In the context of the settled position of law, the evidence will have to be appreciated.

14. It will be necessary to refer to the affidavit in lieu of the examination in chief of the claimant. In paragraph No.11 of his evidence, he has given detailed description of four structures on the acquired land with reference to the area of each structure. In paragraph No.12 of his affidavit, he has set out the description and type of construction

of four structures. Paragraph No.13 onwards is nothing but re-production of the opinion of the valuer which is on record. In his evidence he has not stated that he had an occasion to see the lands subject matter of the two sale instances which are relied upon by him and that the said lands subject matter of the sale instances are comparable. In the cross-examination he admitted that he was personally occupying only an area comprising of three rooms admeasuring about 300 sq feet. He admitted in the cross-examination that rest of the structures were occupied by fourteen other persons either for commercial purpose or for residential purpose. He stated that said fourteen persons were paying him rent. In the cross-examination he admitted that the structures on the acquired land were errected about 60 to 65 years ago and they were errected at different time. It must be stated here that before the Land Acquisition Officer, the claimants had not made any claim of compensation in respect of the structures. It is true that failure to make a claim before the Land Acquisition Officer will not preclude the Claimant from making a claim under section 18 of the said Act of 1894. It must be stated here that the Claimant accepted in the cross-examination that except an area comprising of three rooms admeasuring 300 sq feet, the remaining area of the structures was in

possession of the fourteen occupants. In the cross examination he has tried to come out with a case that the occupants were his tenants. However, in the examination in chief the claimant has not at all given any particulars as regards alleged tencancy of fourteen persons. He has not disclosed in the affidavit of examination in chief any particulars of the nature of the right of the said fourteen occupants in respect of the said structures. It is not clear whether the occpuants were tenants of the land below the structure or were the tenants of the strucutre itself. It was for the claimant to plead all the particulars and to lead evidence to show in what capacity the said fourteen persons were occupying the structures.

15. Thus, the evidence of the claimant is not helpful in establishing that the lands subject matter of the two sale instances which are relied upon were comparable lands. The evidence is also not relevant and helpful for deciding the exact quantum of market value of the structures. Howver, the said evidence is certainly relevant in so far as the type and nature of the structures is concerned, the particulars of which are found in paragraph No.12 of the affidavit in lieu of examination in chief. The nature and type of structures is something which is within the personal

knowledge of the claimant and there is hardly any challenge on that aspect in his cross-examination.

16. It will be necessary to refer to the valuation report of M/s.K.C.Gandhi and Company. In paragraph No.3 of the report which is duly proved in evidence, details of the four structures with reference to names of the occupants are incorporated. Paragraph No.3 shows that the claimant was in possession of three resdential rooms. In the same paragraph valuation of the structures has been made. In paragraph No.4, history of the construction of the four structures has been narrated of which obviously the expert had no personal knowledge. The nature of structures incorporated in the report is the same as what is stated by the claimant in his affidvit in lieu of examination of chief. In paragraph No.7, the expert has given net present value of the year 1991 of the fourteen structures. The net present value of structure No.1 admeasuring 147.10 sq meter is given as Rs.03,05,274/-. He has referred to four sale instances two of which are already referred to above. The other two are in respect of flats sold in constructed buildings. The expert has also relied upon the average land rate fixed by the State Government for the purposes of payment of stamp duty.

17. The expert witness has also filed his affidavit in lieu of evidence. He has proved the contents of the report in his evidence. The said expert has been extensively cross-examined by the counsel for the acquiring body. In the cross-examination he admitted that when he visited acquired land on 03rd August, 2001, the structures were already demolished and the road was constructed. The certified copies of four instances of sale were produced and proved during the recording of evidence of the said expert. He stated that the names of the occupants of the structures incorporated in the report are mentioned on the basis of the information given by the claimant. He admitted that the details of the rent allegedly received by the claimant from the occupants are not incorporated in the report. He was cross-examined on the four sale instances. He admitted that the acquired property was a leasehold property. While he was cross-examined on Exhibits B and C which are sale instances of sale of flats on ownership basis, he admitted that the sale of a flat is not directly comparable to sale of a land with encumberance of the structures. He, however, stated that land rate can be derived from the sale of flat on ownership basis by applying the residue method. He admitted that in the report he has not given any particulars as to how he derived the land value on the basis of the value of the flats. In the

cross-examination, the witness stated the land which is subject matter of Exhibit B is at five minutes walk from the acquired land and land subject matter of Exhibit D is at the distance of one- half kilometer.

18. Exhibit B is a certified copy of agreement dated 19th June, 1991 executed by Tata Housing Development Company Ltd in favour of one Farida Dara Bambaot. By the said agreement, the purchaser acquired a flat on ownership basis. The description of property on which flat is constructed is mentioned in the schedule to the said agreement. The document at Exhibit C is a certified copy of agreement dated 07th February, 1991 executed by M/s.L.P.Construction Company in favour of Dr. Harish N. Bhat and others. The said agreement is also for a sale of a flat constructed on the property which is more particularly described in the schedule. The Exhibit D is a certified copy of Deed of Assignment dated 26th March, 1991 executed by Dr Mrs Anusaya Divecha in favour of M/s.Zenith Export in respect of land admeasuring 517.56 sq meters bearing Plot No.A-13 in the estate of Vile Parle Model Co-operative Housing Society. In so far as the first two sale instances are concerned, apart from the fact that no evidence has been led to show that the lands on which flats were constructed were comparable to acquire land, the expert valuer has

not given either in his report or in his examination in chief the method adopted for deducing the market value of the land on the basis of the market value of a flat in the building constructed on the said land. Moreover, there is nothing on record to prove that the lands on which the flats subject matter of the said documents are situated are comparable to acquired lands. As far as the property subject matter of the indenture dated 26th March, 1991 is concerned, no details such as potentialities and features of the said land subject matter of the document dated 26th March, 1991 are placed on record. Perusal of the said document shows that what is sold is a plot in Vile Parle Model Co-operative Housing Society Ltd. The sale deed discloses that the larger property was developed by the society by dividing into several plots and there were amenities made available to the members holding plots by way of roads and passage. Thus, the subject matter of the said sale deed is a plot together with a bungalow in a developed lay-out of a Co-operative Housing Society. The acquired land cannot be said to be comparable as it is encumbered by several structures which were very old and therefore, the acquired land cannot be on par with a plot out of a lay-out developed by Co-operative Housing Society.

19. The last sale instance (Exhibit E) is dated

15th January, 1990 executed by Balkrishna Khade and others in favour of M/s.Snehdeep Developers. The same is in respect of a plot admeasuring 639 sq. meters at Vile Parle (East). Even the expert valuer has stated that it is at the distance of one and half kilo meters away from the acquired land. In the valuation report it is stated that it is not comparable. In so far as rates fixed by the State Government for the purposes of the stamp duty are concerned, it is well settled law that market value within the meaning of section 23 of the said Act of 1894 cannot be determined on the basis of the rates fixed by the State Government. Thus, the claimant has not at all discharged burden on him to prove that the market value of the land offered by the Special Land Acquisition Officer is inadequate. Therefore, enhancement in market value of the land cannot be granted.

20. In so far as structures on the land are concerned, except for an area of 300 sq feet, the claimant was not in possession of any other structure. There is no evidence on record to show that the strctures were owned by the claimant in the sense that the same were constructed by the claimant or his predecessor. There is no material evidence on record to show whether the fourteen occupants in possession were the tenants of the structures or tenants of the

land under the structures. In fact, no positive evidence has been led by claimant to prove in what capacity the structures were in possession of 14 strangers. In absence of this evidence on record, claimant is not entitled to get compensation in respect of structures save and except compensation in respect an area of 300 sq feet occupied by him in the structure described as structure No.1 in the affidavit in lieu of evidence of the claimants as well as in the report of the expert valuer. In the affidavit of examination-in-chief of the claimant, he has given the description of the structure No.1 out of which area of 300 sq feet is in his possession. He has stated that the structure was made of brick walls with foundation upto hard soil. There was a plinth having height of two feet and room height of minimum of 10 feet. All details of the material used in construction are incorporated. There is no serious challenge to the description of structure No.1 given by the claimant in his affidavit in lieu of examination-in-chief. The report of the expert shows that on the basis of the said description, the expert has calculated the replacement cost by taking the life of structure No.1 as 80 years. He has taken into account depreciation and has calculated the net present value in the year 1991 at Rs.3,05,274/- for the area of 147.10 sq meters. There is no reason to discard the opinion of

the expert as regards the market value of the structure No.1 on the relevant date. Accepting the said market value, the market value in respect of area of 300 sq feet comes to Rs.57,860.80/-. In so far as the calculation of market value of 300 sq feet on the basis of the valuation made by the expert is concerned, there is no dispute between the counsel appearing for the acquiring body and the counsel for the claimant.

21. The Claimant has claimed enhanced compensation in respect of the well. About the existence of the well, there is no dispute as even the Award records the existence of the well. The valuation of the said well is made by the expert at Rs.15,000/- on the relevant date of April 1991. It is not the case either of the State or of the acquiring body that the well was not having any water supply. On the quantum of valuation of the well claimed by the claimant, there is no serious cross-examination. Therefore, there is no reason to deny the claim of enhancement of the market value of the well. The Special Land Acquisition Officer has taken market value of the well only at Rs.1,000/-. Therefore, enhancement in market value of the well will have to be granted to the extent of Rs.14,000/-.

22. At this stage the said dictation of judgment is adjourned till Wednesday 01st August, 2007 for the purpose of incorporating the accurate calculations. To be listed first on board.

23. Therefore, the reference under section 18 of the said Act of 1894 deserves to be allowed in part.

24. Hence, I pass the following order:

(i) The Claimant will be entitled to compensation of Rs.15,000/- on account of cost of the well. He shall be also entitled to compensation of Rs.57,860/- in respect of area of 300 sq.feet in the structure on the acquired land. Thus, the Claimant will be entitled to compensation as under:

(a) The land value for the land of Rs.450/- per sq. meter for the area of 541.3 sq meter : **Rs.2,43,585/-** (as awarded by Special Land Acquisition Officer).

(b) Compensation on account of a part of the structure admeasuring 300 sq. feet occupied by the Claimant : **Rs.57,860.80/-**.

(c) Compensation on account of value of the well : **Rs.15,000/-**.

(ii) In addition to the aforesaid amounts, the Claimants will be entitled to 30 per cent solatium as provided under section 23(2) of the Land Acquisition Act, 1894. The Claimants will be entitled to interest at the rate of 12 per cent per annum as provided under section 23(1A) of the Land Acquisition Act, 1894 for a period of 729 days from 10th January, 1992 to 07th January, 1994.

(iii) The Claimant will be entitled to interest at the rates of 9% and 15% respectively as per section 28 of the Land Acquisition Act, 1894 on the enhanced amount of compensation.

(iv) The Special Land Acquisition Officer will pay the amount payable to the Claimant in terms of this Judgment after deducting the amount which is already paid to the Claimant within a period of four months from today.

(v) The Special Land Acquisition Officer will pay proportionate costs of this reference to the

Claimant.

(vi) Certified copy is expedited.

JUDGE